

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VICTOR MERCADO GONZALEZ,

Petitioner,

v.

NATHALIE R. ASHER, et al.,

Respondents.

Case No. C15-1778-MJP

**ORDER GRANTING IN PART
AND DENYING IN PART HABEAS
PETITION**

The Court, after careful consideration of the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge, and the balance of the record, does hereby find and Order:

1. The Court adopts the Report and Recommendation.
2. Petitioner's habeas petition, Dkt. 1, is **GRANTED** in part and **DENIED** in part.
3. Respondents' motion to dismiss, Dkt. 6, is **GRANTED** in part and **DENIED** in part.
4. Petitioner is not entitled to an order of release.
5. Petitioner is entitled to a bond hearing where the government bears the burden of proving by clear and convincing evidence that he presents a flight risk or a danger to the community. *See Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008); *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) ("*Diouf II*"); *Rodriguez v.*

1 *Robbins*, 804 F.3d 1060 (9th Cir. 2015).

2 6. Within 14 days of the date of this Order, respondents shall provide petitioner with such a
3 bond hearing.

4 7. The Clerk shall send a copy of this Order to the parties and to Judge Tsuchida.

5 DATED this 7th day of March, 2016.

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8 Marsha J. Pechman
9 United States District Judge
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